IN THE

Supreme Court of the United States

79-342

STATE OF WASHINGTON,
Respondent,

v.

BENJAMIN A. REED,
Appellant.

PETITION FOR A WRIT OF CERTIORARI

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IN THE
SUPREME COURT OF THE UNITED STATES

STATE OF WASHINGTON,
Respondent,

v.

BENJAMIN A. REED,
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PETITION FOR A WRIT OF CERTIORARI

A.

RESUME OF PROCEEDINGS

This matter was originally tried in Kitsap County District Court No. 1, on April 30, 1976, where the petitioner was found guilty as charged. The petitioner appealed that judgment to the Kitsap County Superior Court, and after trial to said court, a finding of guilty and a judgment of conviction on the charge of illegal gillnet fishing was entered. From this decision, the petitioner appealed to the Washington State Court of Appeals

which certified the matter and sent it directly to the Washington State Supreme Court which affirmed the decision of the trial court on the 31st day of May, 1979. The written opinions of the trial court and the Washington State Supreme Court are attached hereto and incorporated herein as Appendices B and C.

B.

STATEMENT OF JURISDICTION

The petitioner is seeking review of an opinion of the Washington State Supreme Court, filed on May 31, 1979, affirming the conviction of the Petitioner for illegal gillnet fishing by the Kitsap County Superior Court.

C.

QUESTIONS PRESENTED FOR REVIEW

1. Does the State of Wasington have the authority to regulate Indian treaty fishing outside an Indian reservation?

2. If State has the authority to regulate off-reservation fishing by treaty fisherman for conservation purposes, as they claim, what standard must the state meet in showing that a regulation is

necessary for conservation and therefore applicable to Indian treaty fisherman?

3. If the State of Washington does have the authority to regulate off-reservation fishing by Indian treaty fisherman for conservation purposes, as it claims, must not the state rely on conservation principles only in regulating the treaty fisherman?

4. What is the burden of proof that the state must carry to establish the validity of a claimed conservation regulation?

D.

STATUTORY PROVISIONS

This petition involves the following constitutional provisions, treaties and statutes.

I. Article VI, paragraph 2, of the United States Constitution.

> This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the Supreme Law of the land; and judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary not withstanding.

II. The Treaty of Medicine Creek made with the Puyallup and Nisqually Indians in 1854 (10 Stat. 1132). (See Appendix G)

III. Revised Code of Washington 75.08.080:

Rules and regulations-Scope. The director shall investigate the habits, supply and economic use of, and clasify, the food fish and shellfish in the waters of the state and the offshore waters, and from time to time, make adopt, amend, and promulgate rules and regulations as follows:

(1) Specifying the times when the taking of any or all the various classes of food fish and shellfish is lawful or prohibited.

(2) Specifying and defining the areas, places, and waters in which the taking and possession of the various classes of food fish and shellfish is lawful or prohibited.

(3) Specifying and defining the types and sizes of gear, appliances, or other means that may be lawfully used in taking the various classes of food fish and shellfish, and specifying the times, places, and manner in which it shall be lawful to possess or use the same.

(4) Regulating the possession, disposal, and sale of food fish and shellfish within the state, whether acquired within or without the state, and specifying the times when the possession, disposal, or sale of the various species of food fish or shellfish is prohibited.

(5) Regulating the prevention and suppression of all infectious, contagious, dangerous, and communicable diseases and pests affecting food fish and shellfish.

(6) The fixing of the size, sex, numbers, and amounts of the various classes of food fish and shellfish that may be taken, possessed, sold or disposed of.

(7) Regulating the landing of the various classes of food fish and shellfish or parts thereof within the state.

(8) Regulating the destruction of predatory seals and sea lions and other predators destructive of food fish or shellfish, and specifying the proof of the destruction of the same that shall be required.

(9) Specifying the statistical and biological reports that shall be required from licensed or nonlicensed fisherman, dealers, boathouses, handlers, or processors of food fish and shellfish.

(10) Specifying which species of marine and freshwater life are food fish and shellfish.

(11) Classifying the species of food fish and shellfish or parts thereof that may be used for purposes other than human consumption.

(12) Promulgating such other rules and regulations as may be necessary to carry out the provisions of this title and the purposes and duties of the department.

Subdivisions (1), (2), (3), (4), (6), and (7), shall not apply to licensed oyster farms or oysters produced thereon.

IV. Revised Code of Washington 75.08.012:

Duties of the department.

It shall be the duty and purpose of the department of fisheries to preserve, protect, perpetuate and manage the food fish and shell fish in the waters of the state and the offshore waters thereof to the end that such food fish and shell fish shall not be taken possessed, sold or disposed of at such times and in such manner as will impair the supply thereof. For the purpose of

> conservation, and in a manner consistent therewith, the department shall seek to maintain the economic well-being and stability of the commercial fishing industry in the state of Wasington.

E.

STATEMENT OF THE CASE

The parties are in agreement that the petitioner was fishing for salmon for commercial purposes with gillnet gear at a location near Skiff point in the waters of Puget Sound on the 30th day of September, 1975, and was cited for illegal fishing. At the time that the petitioner was cited he possessed a Puyallup tribal fishing card by virtue of the fact that petitioner's wife is a full-blooded Puyallup Indian. That the area in which the petitioner was cited is claimed as a usual and accustomed fishing ground of the Puyallup Indian Tribe and the area was open for fishing, at the time of the citation, under the Puyallup Fishing Regulations (See Memorandum Opinion of trial court attached hereto as Appendix B). At the trial of this matter in the Kitsap County Superior Court, and well before the trial, the petitioner

asserted the defense that the trial court lacked jurisdiction over the petitioner and the subject matter of the action (See Defendant's Motion to Dismiss for Lack of Jurisdiction and Report of Proceedings, p. 3, ll. 19 through 23, p. 10, ll. 12 through 19, and 22 through 24, p. 11, ll. 6 through 7, and p. 47, ll. 1 and 2). This argument was based upon the fact that the petitioner is an Indian who is entitled to fishing rights in Puget Sound pursuant to treaties with the Unted States which treaties supercede the laws of the State of Washington by virtue of the supremacy clause of the United States Constitution.

The trial court rejected this argument in its Memorandum Opinion (See Appendix B). This argument was raised on appeal to the Washington State Supreme Court in the pro se brief of the petitioner (See Appendix E). The Supreme court of Washington stated in its written opinion that the Petitioner conceded that the state had authority to close usual and accustomed grounds to treaty fisherman for conservation purposes. State v. Reed, 92 Wn.2d 271 at 272 and 273, __P.2d __

(19__). This is not the case, and if it were, the petitioner would have had no reason to file his pro se brief with the Washington State Supreme Court, which addressed this issue solely.

The second defense asserted by the petitioner, both before and during the trial, was that the state did not show that the closure, under which the state now claims jurisdiction to prosecute the petitioner, was reasonable and necessary measure essential to conservation (See Petitioner's Motion to Dismiss for Want of Jurisdiction,Appendix A). This argument was rejected by the trial court in its Memorandum Opinion. It was raised on appeal in the brief of the petitioner as assignment of error No. 2 (See Brief of Appellant, Appendix D). The petitioner argued on appeal that, since to be a valid regulation and apply to treaty fisherman, a conservation purpose must be shown and proved beyond a reasonable doubt and that certain raw evidence, and not general statements, are necessary for a showing of a conservation purpose. The Supreme Court of Washington held that the conservation issue is not a part of the crime charged and

need only be proven by clear and convincing evidence and that the state met its burden in proving this (See Decision of Washington Supreme Court, Appendix C).

A third defense, raised by the petitioner while the case was on appeal in Washington, was that the regulations, under which the petitioner was charged, were beyond the scope of the state to impose as they were based on other than conservation grounds (See Brief of Appellant Appendix D). The state did not object to the assertion of the new defense on appeal. The Supreme Court of Washington rejected this agreement also (See Decision of Washington State Supreme court, Appendix B), holding that, as long as a conservation issue is shown, the regulation is valid whether or not there were additional reasons.

F.

ARGUMENT FOR ALLOWANCE OF WRIT

The legal controversy over treaty Indian fishing rights dates back to the turn of this century. The question of the right of the states

to regulate off reservation fishing by treaty Indians has been at the forefront of this controversy.

In 1968, the United States Supreme Court handed down the landmark decision of Puyallup Tribe v. Department of Game, 391 U.S. 392, 20 L. Ed. 2d, 689, 88 S. Ct. 1725 (1968). This decision for the first time held that, under its police power, a state had the power to regulate a federally secured treaty fishing right.

It is impossible to find a valid basis for the existance of such a power on the part of a state. The constitution of the United States, in Article VI, paragraph 2, provides that treaties shall be considered the "supreme law of the land." Since the petitioner in this case is a treaty Indian, and the treaty secures to him the right to take fish in all "usual and accustomed places", it follows that he is not subject to state fishing regulations unless the treaty so provides or Congress so legislates. The Treaty of Medicine Creek, under which the defendant was fishing, does not provide for state regulation and Congress has

never authorized such a regulation. It is, therefore, incumbant on the Supreme Court of the United States to re-examine its prior decisions in this area and hold that the states have no power to regulate Indian off-reservation fishing unless and until Congress expressly delegates the power to do so.

The effect of the decision of the United States Supreme Court to allow state regulation of Indian treaty fisherman has served only to create more confusion in the area of Indian fishing rights. The states and the Indian tribes have placed differing interpretations on state authority inherent in the requirement that the state restriction on treaty fisherman must be "necessary for the conservation of the fish." No court has ever taken the time to show what facts must be shown in order to establish a valid conservation purpose. Courts must be provided with specific guidelines to follow in examining state regulations and regulatory schemes to see if it is really necessary to restrict the Indian treaty rights. The United States

Supreme Court proposed a three pronged standard for state regulation of Indian treaty fishing in Puyallup Tribe, Inc. v. Department of Game, 391 U.S. 392, 20 L. Ed. 2d 689, 88 S. Ct. 1725 (1968),

> First the regulation must be necessary for the conservation of fish. Second, the state restrictions on Indian treaty fishing must not discriminate against Indians. And third, they must meet appropriate standards.

This standard is nebulous at best as far as what specifically must be shown to establish that these criteria have been met. Instead of specific evidence, many courts require only general statements to the effect that the purpose of the regulation was conservation. In effect, what has happened is that the state courts have used the United States Supreme Court's lack of guidelines to dilute treaty rights guaranteed to the Indians under the various treaties and the Constitution of the United States. This is not a problem that has cropped up recently. It has been prevalent since the Supreme Court of the United States first allowed intrusion by the states into treaty rights.

In 1972, Professor Ralph Johnson wrote the following:

> If the Court nevertheless continues to hold that the states have the power to regulate off-reservation fishing, it will have started down a precarious and trouble-strewn path which must be followed to its end. The Court must create standards to guide the states in the exercise of their power. Some constraints have already been imposed by the Courts. However, these standards are notoriously vague, and the states have captialized on this vagueness to create regulatory patterns for salmon fishing which consistently deny the Indians substantial fishing opportunities. Moreover, the vagueness of the case law standards portends a continuing series of clashes between the Indians and the states, each seeking to carve out the broadest possible claim in this legal thicket.

R. Johnson, "The States versus Off-Reservation Fishing: A United States Supreme Court Error," 47 Wash. L. Rev. 207, 208-209 (1972).

Professor Johnson proved to be a prophet with this article and it only further emphasizes that the Supreme Court of the United States must act now to solve this problem.

Along the same line, no case has specifically set the weight of the state's burden of proving the conservation issue. The cases do hold that proof of conservation is part of

the state's burden and must be met before a conviction can be sustained. State v. McCoy, 63 Wn. 2d 421, 387 P.2d 943 (1963).

Inasmuch as this is an essential part of the state's case, the petitioner is of the opinion that it is an element thereof and must be proven beyond a reasonable doubt to further keep the state from eroding treaty rights secured to the Indians.

For the reasons cited above, the petitioner asks the United States Supreme Court to grant Certiorari.

Respectfully Submitted,

VINCENT H.D. ABBEY
TIMOTHY B. ODELL

Attorneys for
Petitioner

IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON IN AND FOR THE COUNTY OF KITSAP

STATE OF WASHINGTON, Plaintiff, vs. BENJAMIN A. REED, SR. Defendant.	)	NO. C - 2 6 1 6 MOTION TO DISMISS FOR WANT OF JURISDICTION

COMES NOW, the Defendant, BENJAMIN A. REED, SR., by and through his Court Appointed Attorney, WILLIAM G. KNUDSEN, and moves this Court for an Order of Dismissal for want of jurisdiction of both the Plaintiff herein and the above-entitled Court in the above-entitled cause.

This Motion is based on the following allegations of fact and law in this case:

1) That the above-named defendant is an Indian who has and is entitled to fishing rights in Puget Sound pursuant to certain treaties entered into with the United States prior to and superseding statehood and the laws of Washington;

2) That the above-named defendant was exercising his treaty fishing rights on and at his usual and accustom grounds and stations in Puget Sound pursuant to tribal regulation;

3) That the United States District Court for the Western District of Washington, "US, et al vs. Washington et al", Cause No. 9213, has continuing jurisdiction over the subject treaty fishing rights and the parties of the above-entitled cause and said court's decision, actions and continuing jurisdiction has been affirmed by the United States Ninth Circuit Court of Appeals (1975); and

4) That the State of Washington has failed to show that the closure by the regulations adopted under which the State now claims jurisdiction to prosecute the above-named defendant were a reasonable and necessary measure essential to conservation.

DATED this 17th day of March, 1977.

s/
WILLIAM G. KNUDSEN
Attorney for Defendant

IN THE SUPERIOR COURT OF THE)
STATE OF WASHINGTON FOR KITSAP)
COUNTY

STATE OF WASHINGTON, Plaintiff,	NO. C-2616
vs.	
BENJAMIN A. REED, Defendant.	MEMORANDUM OPINION

The Court has re-examined its notes taken at trial and the authorities cited by counsel. It concludes that defendant is guilty of the charge of unlawful fishing. Mr. Reed was fishing in an area claimed as its "usual and accustomed fishing grounds" by the Puyallup Tribe, during a time when the area was closed to all commercial fishing. Mr. Reed holds a card showing that he is an authorized fisherman of the Puyallup Tribe and claims exemption from the closure rules established by the State Department of Fisheries. Defendant claims further that this Court has no jurisdiction over his actions which are here charged as a crime due to the actions and rulings of the U.S. District Court for the Western District of Washington, Judge Boldt. The Court must reject each of these contentions.

Mr. Reed is, according to the evidence, of Indian descent. However he is a decedent [sic] of the Chinook-Chehalis Tribe which, according to the evidence, is entitled to fish in those usual and accustomed grounds shared by the Quinault Tribe. Mr. Reed holds a Tribal Fishing Card from the Quinault Tribe also. The Boldt decision is clear that an Indian may hold a card from one tribe only. Consequently, it appears that Mr. Reed's authority issued by the Puyallup tribe to fish as one of its members is void. Assuming that is not true, it is clear to the Court that, at the time in question, the Puyallup Tribe, although claiming the area in which Mr. Reed was fishing, had not had that area designated as a portion of its usual and accustomed

fishing grounds by the District Court. Judge Boldt, in his decision, established the procedure for the tribes to increase the area or change the boundaries of their usual and accustomed grounds. The Puyallups did not avail themselves of this procedure.

Several recent cases including the PUGET SOUND GILLNETTERS ASSOCIATION VS. MOOS, 88 Wn. 2d 677, have established that the State is entitled to regulate commercial fishing for conservation purpcses. It may regulate fishing by Indians as well as non-Indians. There was ample testimony in the record of this case that the closure which Mr. Reed is accused of violating was made for conservation purposes.

Lastly, Mr. Reed claims that he was fishing to assist his wife. This is permitted, under the Boldt decision. However, it is difficult for the Court to see how Mr. Reed was "assisting" his wife when she was not present.

DATED this 14th day of July, 1977.

TERENCE HANLEY, Judge

[No. 45912. En Banc.

THE STATE OF WASHINGTON, Respondent,
v. BENJAMIN A. REED, Appellant

[1] Fish -- Indians -- State Conservation Rules -- Treaty Indians. Validly enacted regulations which are necessary for conservation of the state fisheries resource may be applied in a nondiscriminatory manner to restrict both treaty and nontreaty fishing activities.

[2] Judgment -- Collateral Attack -- Benefiting Party. A person who claims privity with a party to an action and claims benefits under the judgment in that action is bound by the rule of that case and cannot collaterally attack the judgment in a later action.

[3] Fish -- Indians -- State Conservation Rules -- Enforcement -- Burden of Proof. In a prosecution of a treaty Indian for violation of a Department of Fisheries regulation, the prosecution must show, in addition to the regularity of adoption, that the regulation was reasonable and necessary for conservation purposes. Such showing is not a part of the elements of the crime charged, and need only be shown by clear and convincing evidence.

Nature of Action: The defendant, a treaty Indian, was convicted in district court of unlawful commercial gill-net fishing for salmon. He was fishing in a usual and accustomed tribal fishing ground which had been temporarily closed by a Department of Fisheries order.

Superior Court: The Superior Court for Kitsap County, No. C-2616, Terence Hanley, J., entered a judgment of quilty on November 15, 1977.

Supreme Court: Holding that the regulation closing the fishery was valid and shown to be necessary to conservation, the court affirms the conviction.

Dire & Odell, by Timothy Odell, for appellant.

C. Danny Clem, Prosecuting Attorney, and John M. Hancock, Deputy, for respondent.

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	No. 45912
	)	EN BANC
v.	)	
	)	
BENJAMIN A. REED,	)	
	)	
Appellant.	)	Filed May 31, 1979

HOROWITZ,J.--This case turns on the question whether an emergency order of the Director of Fisheries, closing certain areas to sport and commercial coho salmon fishing in order to protect the native run of coho salmon, was validly applied to appellant. We find that it was and affirm appellant's conviction for violation of the regulation under RCW 75.08.260.

Appellant Benjamin Reed is a member of the Quinault Indian Tribe. His wife is a member of the Puyallup Indian Tribe and has tribal fishing rights. On September 30, 1975 appellant fished for salmon with gillnet gear in an area which was opened by Puyallup tribal regulations as usual and accustomed fishing grounds of the tribe. This same area was temporarily closed, however, by emergency Order No. 1283 of the State Director of Fisheries. The order was lawfully promulgated September 15, 1975 in accordance with all requirements of the Administrative Procedure Act, RCW 34.04. It was published in a newspaper of general circulation, the Daily Olympian, and copies were sent to numerous affected parties, including the tribal representatives and attorneys of the Puyallup Tribe. The regulation was also filed with the Unted States District Court in compliance with the injunction issued by District Judge George Boldt in United States v. State of Washington, 384 F. Supp. 312, 417 (W.D. Wash. 1974). Following a hearing, the regulation was approved in substance by that court.

Appellant Reed was prosecuted in Kitsap County District Court for unlawful commercial gillnet fishing for salmon and was found guilty. He now appeals. He concedes the State of Washington has the authority to close even usual and accustomed tribal fishing areas for conservation purposes. He contends, however, that the state failed to prove the regulation was valid and that in fact the rgulation exceeded the authority of the Department of Fisheries. Moreover, he claims that he was validly assisting his wife, a Puyallup Indian, in the exercise of her right to fish in the usual and accustomed fishing grounds of the Puyallup Tribe.

Our disposition of this appeal rests solely on the ground that the regulation in question was valid and the state met its burden of proof in this regard at trial. A regulation which is validly promulgated and necessary for conservation purposes may be applied in a nondiscriminatory manner to restrict both treaty and nontreaty fishing. Puyallup Tribe v. Department of Game of State of Washington, 433 U.S. 165, 171, 53 L. Ed. 2d 667, 97 S. Ct. 2616 (1977) (Puyallup III); Puyallup Tribe v. Department of Game of State of Washington, 39 U.S. 392, 20 L.Ed. 2d 689, 88 S. Ct. 1725 (1968) (Puyallup I). If the regulation in question here was shown to be valid, the fact that appellant was allegedly exercising treaty fishing rights is irrelevant. Since we hold the regulation was shown to be valid, we do not reach the other questions raised, that is, whether appellant could assist his wife in the exercise of her fishing rights when she was not present, and what burden of proof must be met to establish as an affirmative defense that a treaty fisherman was fishing in a usual and accustomed tribal fishing ground.

Appellant attacks the validity ab initio of the regulation promulgated by emergency Order No. 1283 on the ground it exceeds the authority of the Department of Fisheries. He points to the preamble portion of the order, which states that adoption of the regulation "is necessary to preserve, protect and perpetuate coho salmon resources

in Puget Sound waters and to comply with Western Washington Federal District Court minute order signed by Judge George H. Boldt September 13, 1975." A part of the stated purpose of the regulation, appellant notes, is compliance with a federal order which flowed from the decision in United States v. Washington, supra at 342-343, 403, that allocation of fish resources is necessary to preserve treaty fishing rights. Therefore, appellant contends, the purpose of the regulation is allocation, an impermissible purpose for the Department of Fisheries under the rule of Puget Sound Gillnetters Ass'n v. Moos, 88 Wn.2d 677, 565 P.2d 1151 (1977).

Appellant claims the right to exercise Puyallup tribal fishing rights, and thus to be a beneficiary of the federal court's decision in United States v. State of Washington, supra, to which the Puyallup Tribe was a party. He is therefore bound by the rule of that case, which requires allocation, and may not now collaterally attack it on the ground the State of Washington may not allocate. See Williams v. Steamship Mutual Underwriting Ass'n, Ltd., 45 Wn.2d 209, 273 P.2d 803 (1954).

Even if appellant were not precluded from raising the argument, though, we find the regulation valid. The first stated purpose of the regulation is conservation. Expert testimony at trial established the need for the regulation in order to preserve the native coho salmon run. It applied to all fishermen, treaty and nontreaty alike, allowing salmon fishing only in specified areas in order to prevent serious harm to the natural run. Fishing regulation to be applied to treaty fishermen must be reasonable, in that they must employ conservation measures which are appropriate to their conservation purpose. United States v. State of Washington, supra at 342. See also Hartman v. State Game Comm'n, 85 Wn.2d 176, 179, 532 P.2d 614 (1975). Such regulations must also be necessary in that the measures employed must be essential to the interests of

conservation. Anoine v. Washington, 420 U.S. 194, 207, 43 L.Ed. 2d 129, 95 S. Ct. 944 (1975); United States v. State of Washington, supra at 342. We find those tests are met here. The evidence of the regulation itself, and the expert testimony at trial, clearly showed that the Director of Fisheries took this action as reasonable and necessary measure to protect the coho salmon resource. The federal court came to the same conclusion, issuing an order which reflected and thus affirmed the state regulation. Furthermore there was absolutely no evidence at trial that the regulation served an allocation purpose, and nothing in the regulation itself states that it does. The regulation thus meets the standards of both state and federal law with regard to its conservation purpose. We conclude the Director of Fisheries did not exceed his authority in promulgating the regulation in question, and it was valid.

Appellant contends, however, that the state has the burden to prove the validity of its regulation by proof beyond a reasonable doubt, and that it did not meet this burden at appellant's trial. We do not agree that the state's burden is so great, or that it failed to establish the necessity of the regulation.

This court has held that a presumption of validity attaches to a Department of Fisheries regulation once it has been adopted under the procedure required by the Administrative Procedure Act. Department of Game v. Puyallup Tribe, 80 Wn.2d 561, 574, 497 P.2d 171 (1972), rev'd on other grounds sub nom Washington Game Dep't v. Puyallup Tribe, 414 U.S. 44, 38 L. Ed. 2d 254, 94 S. Ct. 330 (1973)(Puyallup II). Where a prosecution for violation of a fishing regulation involves a treaty fisherman, though, the state must make a special showing. It must introduce evidence to show that the regulation was reasonable and necessary for conservation purposes. See United States v. Wasington, supra at 342; Department of Game v. Puyallup Tribe, supra at 574. This special rule for establishing the validity of a state regulation

which has the force of law applies only because of the unique rights of treaty fishermen to fish their usual and accustomed fishing grounds, and the unique capacity of the Department of Fisheries to establish the relevant facts regarding conservation--the sole basis upon which those rights may be restricted. The rule is a method for showing that restriction of treaty fishing rights in the individual case is in fact reasonable and necessary for conservation. Establishment of the validity of a regulation in this matter is not, then, as appellant would have it, a part of the state's case in chief which must be proved beyond a reasonable doubt. In cases where the rule applies the state need only introduce clear and convincing evidence to show that the regulation was reasonable and necessary for conservation purposes. See United States v. State of Washington, supra at 342. The state has more than met that burden here.

The evidence introduced at trial to show the regulation was reasonable and necessary for conservation purposes included the preamble to the regulation itself, which states its conservation purpose, and the expert testimony of a fisheries biologist, Mr. A. Dennis Austin, who was the Program Leader for the Indian Fisheries Management Program. Mr. Austin's testimony specifically detailed the management principles and underlying facts which led to the temporary closure of the waters in which appellant fished. His testimony was unrebutted and established clearly that the conservation measure chosen, temporary closure, was appropriate to the conservation goal and necessary to protect the native coho run from serious harm. He also testified to the fact that the federal court (applying, we may infer, the standards of reasonableness and necessity for conservation which we apply here) approved the substance of the regulation 2 weeks prior to appellant's violation, and that Puyallup tribal representatives and attorneys had notice of the regulation. Under these circumstances we find the state met its

burden of showing the regulation was necessary for conservation purposes by clear and convincing evidence.

The judgment is affirmed.

/s/
Horowitz, J.

WE CONCUR:

/s/	/s/
/s/	/s/
/s/	/s/
/s/	/s/

IN THE COURT OF APPEALS OF THE
STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	NO. 3227-II
	)	
-v-	)	
	)	
BENJAMIN A. REED,	)	
	)	
Appellant.	)	

Appeal From the Superior court of the State of Washington the Honorable Terence Hanley, Judge

BRIEF OF APPELLANT

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ASSIGNMENTS OF ERROR

The Trial Court erred:

1. In its failure to enter a Finding that the regulation was reasonable and necessary to conserve the resource, met appropriate standards and that its application to Indians was necessary for conservation.

2. That if such a finding was made, that there was not sufficient evidence to make such a Finding.

3. In failing to find that the W.A.C. section under which the defendant was charged is invalid.

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STATEMENT OF THE CASE

I. NATURE OF THE CASE

This is a prosecution for illegal gillnet fishing under W.A.C. 220-28-100 (444).

II. RESUME OF PROCEEDINGS

This matter was originally tried in Kitsap County District Court No. 1 on April 30, 1976, where the defendant was found guilty as charged. The defendant appealed that judgment to the Kitsap County Superior Court.

III. NATURE OF COURT'S RULINGS AND JUDGMENT

Trial was to the Court, which entered a Finding of guilty and a judgment of conviction on the charge, based upon its finding that the defendant was fishing commercially for salmon in waters that were lawfully closed to him for those purposes in Kitsap County, Washington.

IV. STATEMENT OF FACTS

The parties are in agreement that the defendant was fishing for salmon for commercial purposes with gillnet gear at a point near Skiff Point in the waters of Puget Sound and in Kitsap County on September 30, 1975.

ARGUMENT

RE: Assignments of Error One and Two

When a person is cited for unlawful fishing, that person may show that he or she is an Indian with treaty fishing rights. State v. Pettit, 88 Wn. 2d 267, 558 P.2d. 796, (1977), State v. Moses 79 WN. 2d. 104, 483 P.2d. 832, (1971), State v. James, 72 Wn. 2d. 746, 435 P.2d 521, (1967). Under U.S. v. Washington, 384 F. Supp. 312 (Western District of Washington, 1974). 520 F. 2d. 676 (9th Cir 1975), cert. den. 419 U.S. 1032, 42 L. Ed. 2d.

307, 95 S. Ct. 513, (1976). That person must also show that he or she was fishing when cited in a usual and accustomed fishing ground of his tribe. U.S. v. Washington, supra, State v. Pettit, supra.

The fact that the defendant has fishing rights in this instance is not disputed however, the State is arguing that the defendant is not the proper person to exercise these fishing rights and further that the fishing did not take place at a usual and accustomed fishing ground of the defendant. The defendant, Benjamin Reed, is an admitted member of the Quinault Indian Tribe. The defendant's wife is a registered member of the Puyallup Indian Tribe with fishing rights. In U.S. v. Washington, supra, the Court held that a tribal fisherman such as the defendant may assist one who holds such a right, U.S. v. Washington, 384 F. Supp. at 412. The State argues that since the defendants wife was not on the boat at the time of the defendants arrest, the defendant cannot be assisting his wife in the exercise of her Puyallup tribal fishing rights. Although he puts this argument forward, he does not put forth any evidence to support his argument. In fact the only evidence presented on this point is the testimony of the defendant on page 44, of the defendant's testimony where he states that tribal regulations do not require the presence of the tribal member on the boat at all times. Since this is the only testimony we have on the subject, it is incumbant upon the prosecution to rebutt this testimony. This did not occur and it was error for the Court to find in its written decision that the presence of the defendants wife was necessary for the valid exercise of Puyallup fishing rights in this instance.

The State further argues that the area in which the defendant was fishing was not the usual and accustomed fishing grounds of the Puyallup tribe. The area in which the defendant was fishing was not originally considered to be part of the Puyallup tribes usual and accustomed fishing area according to Judge Boldt. However, Judge Boldt

provided that a tribal member may prove by affirmative defense in a criminal prosecution that he was fishing at a usual and accustomed area not previously designated as such. U.S. v. Washington, 384 F. Supp. at 408. It is the testimony of the State's witness, Mr. Austin, on page 19, 20 and the testimony of the defendant on page 40, that this area was open under the Puyallup tribal regulations as their usual and accustomed fishing grounds. The State argues that the tribe cannot extend their usual and accustomed fishing grounds without a ruling of the U.S. District Court. Again, no evidence is presented that this is the law in this area. Therefore, it is incumbent on the court to find the defendant was lawfully fishing.

Although a Tribe may open its usual and accustomed fishing areas to tribal members, the State may close such an area for conservation purposes. The State must show that the regulation is reasonable and necessary for the actual conservation of fish, meets "appropriate standards", and that its application to Indians is necessary for conservation. Antoine v. Washington, 420 U.S. 194, 43 L. Ed. 2d. 129, 95 S. Ct. 944 (1975), Department of Game of Washington v. Puyallup Tribe, 70 Wn. 2d. 245, 422 P.2d. 754 (1967) (Washington Puyallup I) Aff'd and rem. 391 U.S. 392, 20 L. Ed. 2d 689, 88 S. Ct. 1725 (1967) (Puyallup I), rem. 80 Wn. 2d. 561, 497 P.2d. 171 (1972), (Washington Puyallup II), rev. and rem. 414 U.S. 44, 38 L.Ed. 2d. 254, 94 S. Ct. 330 (1973) (Puyallup II), rem. 87 WN. 2d 664, 548 P. 2d. 1058 (1976) (Washington Puyallup III), State v. Moses, supra, State v. James, supra.

No case has specifically set the weight of the States burden of proof on this issue. The cases do, however, proof is part of the State's burden, and must be met before a conviction can be sustained. State v. McCoy 63 Wn. 2d. 421, 387 P 2d. 943 (1963). Inasmuch as this is an essential part of the State's case the Appellant is of the opinion that it is an element thereof, and must be proven beyond a reasonable doubt. State v. Odom,

83 Wn. 2d. 541, 520 P.2d. 152, cert. denied 419 U.S. 1013, 42 L. Ed. 2d. 287, 95 S. Ct. 333 (1974).

It is the contention of the defendant that the record herein is insufficient to support a finding that the regulation under which the defendant is charged was reasonable and necessary for conservation, that it met "appropriate standards" and needed to be applied to treaty Indians for conservation purposes. Antoine v. Washington, supra, State v. Washington, supra at 752.

Instead of specific evidence, the record reflects general statements to the effect that the purpose of the regulation was intended to conserve the natural run.

This is unsatisfactory under any burden of proof. Raw data is what has been consistently required in the past: Figures, numbers, reports and statistics. These have been held satisfactory. Puyallup II, supra at 49, Washington Puyallup II, supra at 572.

The purpose behind this requirement is clear: To enable the Court to scrutinize the particular regulation and its background, and make an independant determination on these issues. The record in this case simply does not support a finding that the regulation we are concerned with meets the requirements established by prior decisions.

RE: Assignment of Error No. 3

Should the Court reach the conclusion that the defendant was fishing in waters closed to him, they then must address themselves to the question of whether or not these waters were lawfully closed.

It is the position of the defendant that the WAC section under which he was charged is invalid as being outside the scope of the authority vested by law in the Department of Fisheries. In Puget Sound Gillnetters Association et al. v. Donald

Moos, 88 Wn. 2d. 677 (1977) and the Purse Seine Vessel Owners Association v. Moos, 88 Wn. 2d. 799 (9177), the Washington State Supreme Court held that the authority of the Washington Department of Fisheries to regulate commercial salmon fishing (RCW Title 75) is limited to conservation purposes. Therefore, a regulation based on any part on other than conservation grounds would be outside the authority of the Department and therefore invalid.

With respect to the violation at hand, the defendant was charged under Emergency Order 1304, or WAC 220 - 28 - 100 (444). By the States admission in its trial brief on page 6, Emergency Order 1304 was instituted to extend Emergency Order 1283 for a longer period of time. Emergency Order 1283 in its preamble, states that its adoption as an Emergency Order was "to comply with the Western Washington Federal District Court's Minute order signed by Judge George Boldt September 13, 1975". That order was introduced into evidence and it was executed by Judge Boldt in order to restrain the State from opening certain State waters to non-Indian fisherman and thereby to more nearly assure the allocation to the Indians of their 50% share of the harvestable catch.

Even if this were not the sole purpose behind the propagation of 1283, the fact that the order was based in part on something other than conservation makes it bad. I would again cite Puget Sound Gillnetters Assn., et al. v. donald Moos, et al., supra, and Purse Seine Vessel Owners Assn v. Moos, supra, where the court held that Federal Courts cannot order State agencies to affimatively act in excess of their statutory authority. Since the prosecution has linked Emergency Order 1304 to Emergency Order 1283, it appears that Emergency Order 1304 was promulgated for other than conservation purposes and therefore void.

CONCLUSION

It is the opinion of this author that because of the foregoing arguments, that the conviction of

the defendant in this matter should be reversed and a judgment of dismissal entered.

DATED this 8th day of June, 1978.

Respectfully submitted,

DIRE & ODELL

By _____
Timothy Odell
Attorneys for the Appellant

Appendix E

IN THE COURT OF APPEALS OF THE
STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	NO. 3227-11
	)	
v.	)	
	)	
BENJAMIN A. REED,	)	
	)	
Appellant.	)	

Appeal from the Superior Court of the State of Washington

The Honorable Terence Hanley, Judge.

Pro Se BRIEF OF APPELLANT

Timothy Odell
Attorney for Appellant

Office and Post Office Address:

713 S. Broadway
Suite Three
Everett, WA 98204
206-353-1774

SUPPLEMENTAL BRIEF OF APPELLANT

My name is Benjamin A. Reed, Sr. I am a 61 year old Indian. I am writing this supplemental brief to protest State jurisdiction over me.

I have always objected to the State of Washington trying to assume jurisdiction over treaty Indians. In the first place, the State of Washington is not vested with any treaty making powers as far as I can find out. The 6th Article of the United States constitution, Paragraph 2, states: "This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the Supreme Law of the Land; and judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding" I take this to include the State of Washington, as it is part of the United States, and also a state.

Now let us go a little further and look at some of the laws by which Washington became a state.

There was an act called the Enabling Act by which Washington became a state. This act was made in 1889 after the treaties were signed. The State of Washington was a signator of this act. This act has a clause in it which I would call a disclaimer clause. Sec. 4, Para. 2: ". . . that the people inhabiting said proposed States do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said limits over or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States.

I would take this to mean there is no State jurisdiction over treaty Indians. The State of Washington in its own constitution states, Art. I, Sec. 2: "Supreme Law of the Land" The Constitution is the Supreme Law of the Land. Article 26 of the State Consitution further supports this, as the 2nd paragraph is a copy of Sec. 4, Para.2 of the Enabling Act, where again the State disclaims all rights over Indians.

I would have to say that the State of Washington could be guilty of breaking some of the highest laws in this land, and if that is the case, then the judicial powers of the State are being overextended into areas where they have no jurisdiction, and that is the reason I ask for dismissal of this case. The State of Washington has no jurisdiction over me or over my treaty rights. I do not think that the State has any right to interpret treaties of a kind that rightly belongs to Congress alone, and for that reason I ask for dismissal.

Benjamin A. Reid [sic], Sr.

Appendix F

§ 1257. State courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929.

Appendix G

Treaty

Franklin Pierce,

President of the United States of America,

To all and Singular to whom these Presents shall come

Greeting

Whereas a treaty was made and concluded at the She-nah-nam, or Medicine Creek, in the Territory of Washington, on the twenty sixth day of December, one thousand Eight hundred and fifty four, between the United States of America and the Nisqually and other Bands of Indians, which treaty is in the words following, to wit:

Articles of Agreement and Convention, made and concluded on the She-nah-nam or Medicine Creek in the Territory of Washington this twenty sixth day of December in the year one thousand eight hundred and fifty four, by Isaac I. Stevens, Governor and Superintendent of Indian Affairs of the said Territory on the part of the United States, and the undersigned Chiefs, Headmen and delygates of the Nisqually, Puyallup, Stailacoom, Squawksin, S'Homamish, Steh-chass, T'peh-tsin, Squi-aitl and Sa-heh-wamish tribes and bands of Indians, occupying the lands lying around the head of Puget Sound and the adjacent inlets, who for the purpose of this treaty are to be regarded as one nation, on behalf of said tribes and bands, and duly authorized by them.

Art. I The said tribes and bands of Indians hereby cede, relinquish and convey to the United States all their right, title and interest in and to the lands and country occupied by them, bounded and described as follows, to wit:

Commencing at the point on the eastern side of Admiralty Inlet, known as Point Pully, about midway between Commencement and Elliott Bays; thence running in a South easterly direction, following the divide between the waters of the Puyallup and Duwamish or White rivers to the summit of the Cascade Mountains, thence Southerly along the summit of said range to a point opposite the main source of the Skookum Chuck Creek, thence to and down said Creek to the coal mine, thence Northwesterly to the summit of the Black Hills, thence northerly to the upper forks of the Sot-sop river, thence Northeasterly through the portage known as Wilkes' portage to Point Southworth on the western side of Admiralty Inlet, thence around the foot of Vashon's Island easterly and Southeasterly to the place of beginning.

Art. II There is however reserved for the present use and occupation of the said tribes and bands the following tracts of land, viz:

The small island called Klah-che-min, situated opposite the mouths of Hammersley's and Totten's inlets, and separated from Hartstine island by Peale's passage, containing about two sections of land by estimation; A square tract containing two sections or twelve hundred and eighty acres on Puget Sound near the mouth of the She-nah-nam creek, one mile west of the meridian line of the United States land survey, and a square tract containing two sections or twelve hundred and eighty acres lying on the south side of Commencement Bay; All which tracts shall be set apart, and so far as necessary surveyed and marked out for their exclusive use, nor shall any white man be permitted to reside upon the same without permission of the tribe and the Superintendent or Agent. And the said tribes and bands agree

to remove to and settle upon the same within one year after the ratification of this Treaty or sooner if the means are furnished them. In the meantime it shall be lawful for them to reside upon any ground not in the actual claim and occupation of citizens of the United States, and upon any ground claimed or occupied if with the permission of the owner or claimant. If necessary for the public convenience roads may be run through their reserves, and on the other hand the right of way with free access from the same to the nearest public highway is secured to them.

Art. III – The right of taking fish at all usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the Territory and of erecting temporary houses for the purpose of curing, together with the privilege of hunting, gathering roots and berries and pasturing their horses on open and unclaimed lands. Provided however that they shall not take shell fish from any beds, staked or cultivated by citizens, and that they shall alter all stallions not intended for breeding horses and shall keep up and confine the latter.

Art. IV In consideration of the above cession, the United States agree to pay to the said tribes and bands the sum of Thirty two thousand, five hundred dollars in the following manner, that is to say, For the first year after the ratification hereof, three thousand, two hundred and fifty dollars; for the next two years three thousand dollars each year, for the next three years, two thousand dollars each year, for the next four years fifteen hundred dollars each year, for the next five years, twelve hundred dollars each year, and for the next five years one thousand dollars each year: All which said sums of money shall be applied to the use and benefit of the said Indians under the direction of the President of the United States, who may from time to time determine at his discretion upon what beneficial objects to expend the same, And the Superintendent of Indian Affairs, or other proper officer, shall each year inform the President of the wishes of said Indians in respect thereto.

Art. V To enable the said Indians to remove to and settle upon their aforesaid reservations, and to clear, fence and break up a sufficient quantity of land for cultivation, the United States further agree to pay the sum of three thousand, two hundred and fifty dollars to be laid out and expended under the direction of the President and in such manner as he shall approve.

Art. VI. The President may hereafter, when in his opin-

ion the interests of the Territory may require, and the welfare of the said Indians be promoted, remove them from either or all of said reservations to such other suitable place or places within said Territory as he may deem fit, on remunerating them for their improvements and the expenses of their removal, or may consolidate them with other friendly tribes or bands. And he may further at his discretion cause the whole or any portion of the lands hereby reserved, or of such other land as may be selected in lieu thereof to be surveyed into lots, and assign the same to such individuals or families as are willing to avail themselves of the privilege and will locate on the same as a permanent home, on the same terms and subject to the same regulations as are provided in the Sixth Article of the Treaty with the Omahas, so far as the same may be applicable. Any substantial improvements heretofore made by any Indian and which he shall be compelled to abandon in consequence of this treaty, shall be valued under the direction of the President and payment be made accordingly therefor.

Art. VII. The annuities of the aforesaid tribes and bands shall not be taken to pay the debts of individuals.

Art. VIII The aforesaid tribes and bands acknowledge their dependence on the government of the United States, and promise to be friendly with all citizens thereof, and pledge themselves to commit no depredations on the property of such citizens. And should any one or more of them violate this pledge, and the fact be satisfactorily proven before the agent, the property taken shall be returned, or in default thereof, or if injured or destroyed, compensation may be made by the government out of their annuities. Nor will they make war on any other tribe except in self defence, but will submit all matters of difference between them and other Indians to the government of the United States or its agent for decision and abide thereby. And if any of the said Indians commit any depredations on any other Indians within the Territory, the same rule shall prevail as that prescribed in this article in cases of depredations against citizens. And the said tribes agree not to shelter or conceal offenders against the laws of the United States, but to deliver them up to the authorities for trial.

Art. IX. The above tribes and bands are desirous to exclude from their reservations the use of ardent spirits and to prevent their people from drinking the same, and therefore it is provided that any Indian belonging to said tribes who is guilty of bringing liquor into said reservations, or who drinks liquor, may have his or her proportion of the annuities withheld from him or her for such time as the President may determine.

Art. X. The United States further agree to establish, at the general Agency for the District of Puget's Sound, within one year from the ratification hereof, and to support for a period of twenty years, an agricultural and industrial school, to be free to children of the said tribes and bands, in common with those of the other tribes of said district; and to provide the said school with a suitable instructor or instructors, and also to provide a smithy and carpenter's shop, and furnish them with the necessary tools, and employ a blacksmith carpenter and farmer, for the term of twenty years, to instruct the Indians in their respective occupations. And the United States further agree to employ a physician to reside at the said central agency, who shall furnish medicine and advice to their sick and shall vaccinate them; the expenses of the said school, shops, employees and medical attendance, to be defrayed by the United States, and not deducted from the annuities.

Art XI The said tribes and bands agree to free all slaves now held by them, and not to purchase or acquire others hereafter.

Art XII The said tribes and bands finally agree not to trade at Vancouver's Island or elsewhere out of the dominions of the United States; nor shall foreign Indians be permitted to reside in their reservations without consent of the Superintendent or Agent.

Art XIII This treaty shall be obligatory on the contracting parties as soon as the same shall be ratified by the President and Senate of the United States.

In testimony whereof the said Isaac I. Stevens, Governor and Superintendent of Indian Affairs and the undersigned Chiefs, headmen & delegates of the aforesaid tribes and bands have hereunto set their hands and seals at the place and on the day and year hereinbefore written.

Executed in the presence of us.

M. T. Simmons, Indian Agent — Isaac I. Stevens L.S. Gov. & Sup. Ter. Wash.

James Doty, Secretary of the Commission — Qui-ee-metl x L.S.

C. H. Mason, Secy. Wash. Ter. — Sno-ho-dum-set x L.S.

W. A. Slaughter, 1st Lieut. 4th Infty — Lesh-high x L.S.

James McAlister — Slip-o-elm x L.S.

E. Giddings Jr — Kwi-ats x L.S.

George Shazer — Stee-high x L.S.

Henry D. Cock — Di-a-keh x L.S.

S. S. Ford Junr — Hi-ton x L.S.

Jno. W. McAlister — Squa-tee-hun x L.S.

Clovington Cushman — Kahk-tse-min x L.S.

Peter Anderson — Sonan-o-yutl x L.S.

Samuel Klady — Kl-tehp. x L.S.

W. H. Pullen — Sahl-ko-min x L.S.

P. O. Hough — T'bet-ste-heh-bit x L.S.

E. R. Tyerall — Tcha-hoos-tan x L.S.

George Gibbs — Ke-chah-hat x L.S.

Benj. F. Shaw, Interpreter — Spee-peh x L.S.

Swe-yah-tum x L.S.

Hazard Stevens — Chah-achsh x L.S.

Pich-kehd x L.S.

S'Klah-o-sum x L.S.

Sah-le-tatl x L.S.

See-lup x L.S.

E-la-kah-ka x L.S.

Slug-yeh x L.S.

Hi-nuk x L.S.

Ma-mo-nish x L.S.

Chaels X L.S.

Anutcomet X L.S.

Bats-tee-kobe X L.S.

Win-ne-ya X L.S.

Klo-out X L.S.

Se-uch-ka-nam X L.S.

Ske-mah-kan X L.S.

Wuts-un-a-pum X L.S.

Quuts-a-tadm X L.S.

Quut-a-heh-mtsn X L.S.

Yah-leh-chn X L.S.

To-lahl-kut X L.S.

Yul-lout X L.S.

See-ahts-oot-soot X L.S.

Ye-tahko X L.S.

We-po-it-ee X L.S.

Kah-sld X L.S.

Lah-hom-kan X L.S.

Pah-how-atish X L.S.

Swe-yehm X L.S.

Sah-hwill X L.S.

Se-kwaht X L.S.

Kah-hum-klt X L.S.

Yuh-kwo-bah X L.S.

Sahs-ba-hat X L.S.

Tel-e-kish X L.S.

Swe-keh-nam X L.S.

Sit-oo-ah X L.S.

Ko-quel-a-cut X L.S.

Jack X L.S.

Keh-kise-be-lo X L.S.

Go-yeh-hn X L.S.

Sah-putsh X L.S.

William X L.S.

And whereas the said treaty having been submitted to the Senate of the United States, for its constitutional action thereon, the Senate did, on the third day of March, One thousand Eight hundred and fifty five, advise and consent to the ratification of its Articles, by a resolution in the words and figures following, to wit:

In Executive Session, Senate of the United States.—

March 3. 1855.

Resolved. (two thirds of the Senators present concurring) That the Senate advise and consent to the ratification of the articles of agreement and convention made and concluded on the She-nah-nam, or Medicine creek, in the Territory of Washington, this twenty sixth day of December, in the year one thousand eight hundred and fifty four, by Isaac I. Stevens, Governor and Superintendent of Indian Affairs of the said Territory, on the part of the United States and the undersigned Chiefs, headmen, and delegates of the Nisqually, Puyallup, Steilacoom, Squawksin, S'homamish, Steh-chass, T'peck-sin, Squiaitt, and Sa-Heh-wamish tribes and bands of Indians, occupying the lands lying round the head of Puget Sounds and the adjacent inlets; who, for the purposes of this treaty, are to be regarded as one nation, on behalf of said tribes and bands, and duly authorized by them.

Attest

Asbury Dickins

(Copy)

Secretary.

Now, therefore, be it known that I
Franklin Pierce,
President of the United States of Am[illegible],
in pursuance of the advice and [illegible] of
the Senate as expressed in the[illegible]ion of
the third day of March [illegible] and eight
hundred and fifty four[illegible], ratify
and confirm the said [illegible].

In testimony [illegible] I have caused the
Seal of the Uni[illegible] to be hereto affixed,
having signed the same with my hands

Done at the City of Washington, this
tenth day of April, in the year of
our Lord one thousand eight hundred
and fifty four, and of the Independence
of the United States, the Seventy
Ninth

Franklin Pierce

By The President

Wm. L. Marcy

Secretary of State